"Mr. Wong for the plaintiff admitted that there is a mathematical error in his calculation of the amount. Mr. Seah for the defendant submitted that because of a wrong calculation of the total amount of rent by plaintiff the demand became unlawful in that it was not 'rent lawfully due' within the beaning of paragraph (a) of subsection (1) of section 15 of the said Ordinance. No authority was quoted to support this proposition. I am aware of no authority on this point. At any rate I do not think such an error will be fatal to plaintiff's claim as a true perspective can be drawn from the facts."

I have no reason to depart from the view I expressed above. The object of the demand was lucidly expounded in *Leong Man Pan's* case. The validity of the notice of demand was fully discussed in *Cherian Varughese* v. *Aminah Radin Osman* [8] which escaped the attention of both counsel as it was not cited to me.

In *Cherian Varughese* v. *Aminah Radin Osman* the appellant contended that for there to be a valid notice of demand in writing within the meaning of section 15(1)(a) of the Singapore Control of Rent Ordinance it was essential that the demand must be for the precise sum then payable and not one cent more or less. In support appellant cited a passage in *Woodfall* on Landlord and Tenant. Wee Chong Jin J., (as he then was) rejected the contention in these words:—

"I am unable to agree with this contention. The passage cited relates to the common law principle that unless there are express words in a lease or agreement dispensing with a formal demand of the rent, or the case falls within section 210 of the Common Law Procedure Act 1852, no entry or ejectment can be maintained for non-payment of rent without a previous formal demand thereof made according to the strict rules of the common law. It must be remembered that the formal demand required by the common law only arises in cases where the lease or tenancy has not been duly determined and before such due determination the landlord seeks to obtain possession by a writ of ejectment based on non-payment of rent. In this case it is not in dispute that the tenancy has been duly determined according to law. The point before me is what is the true meaning of the word "demand" in section 15(1)(a) and in my opinion the very words of section 15(1)(a) which require a 'notice of demand in writing' make it abundantly clear that it was not the intention of the legislature that the word 'demand' is to be construed to mean a formal demand made in accordance with the strict rules of the common law but that the word 'demand' should be construed in its popular sense. I am accordingly of the opinion that tht letter of the 5th October 1956 was sufficient notice of demand in writing as required by section 15(1)(a) of the Ordinance."

The notice of demand does not determine the tenancy but merely provides a tenant with an opportunity to pay. The legislature has given the tenant an additional protection by imposing on the landlord a duty of making a demand in writing before he can determine the tenancy. The learned magistrate appeared to have construed the word "demand" to mean a formal demand in accordance with the strict rules of the common law. He was therefore wrong in holding that the notice of demand dated 21st July 1964 was defective. I am sure had his attention been drawn to *Cherian Varughese's case* and *Leong Man Pan's case* he would have come to a different conclusion.

In the result the appeal must be allowed. I direct a new trial. The costs of this appeal and of the court below as assessed by the learned magistrate will be paid by the respondent.

Appeal allowed.
New trial ordered.

HAMID BIN AWANG v. YEO KIM KUAN

[O.C.J. (Ismail Khan J.) October 22, 1965]
[Malacca — Civil Suit No. 180 of 1964]

Damages — Personal injuries — Spinal cord — Fracture of cervical vertebra — Paralysis.

The plaintiff, suing by his next friend, claimed damages for personal injuries sustained in a collision between himself and a car driven by the defendant as a result of which he suffered a serious injury to his spinal cord involving a fracture of the 6th cervical vertebra. This resulted in a paralysis of the muscles of the forearms and hands, the trunks and the lower limbs. There was a loss of sensation in the back of the hands and the whole of the body from below the 2nd intercostal space. The hands were clawed and useless, the lower limbs were flexed at the knee and hip joint and were in a state of intermittent spasms. As a result of his injury the plaintiff was reduced to such a state of helplessness that he was unable to perform the simplest function independently of aid and attention. At the time of the accident the plaintiff was about 20 years old. He was accepted as a student teacher at the Day Training Centre, Malacca, for teachers and had it not been for the accident would have commenced his course on April 1, 1964. From the evidence the court found that the defendant was solely to blame for the accident. On the question of quantum of damages,

Held: (1) the plaintiff had to be compensated somehow for the loss of earning capacity and the amenities of life during his remaining life expectancy;

(2) taking all relevant matters into consideration, a sum of $110,000 would be an appropriate figure for general damages being a sum of $70,000 for loss of amenities and $40,000 for loss of earnings.

Case referred to:—

(1) *Quek Poh Ser & Anor.* v. *Jhagir Singh* [1962] M.L.J. lxxxviii.

CIVIL SUIT.

H. E. Cashin for the plaintiff.

N. Ramachandran for the defendant.

Cur. Adv. Vult.

Ismail Khan J.: In this case the plaintiff claims damages for personal injuries sustained in a collision between himself and a car driven by the defendant which took place at about 10.30 a.m. on 19th March, 1964, in Bunga Raya Road, Malacca. In his statement of claim he attributes the accident to the negligent driving of the defendant. In his defence the defendant alleges that the accident was caused solely or contributed to by the negligence of the plaintiff.

There were no eye-witnesses of the collision.

In view of the conflicting versions given by the plaintiff and the defendant, it is necessary to test these against the evidence of the sketch plan and measurements and the independent evidence of the police sergeant who visited the scene just after the accident.

According to the plaintiff, on the day in question he left the Treasury, Malacca, and was on his way to the bus stand to get his bus for the Day Training Centre. He had to pass through Bunga Raya Road to reach the bus stand. He proceeded along the left side of the road. It was a hot day and he decided to cross over to the opposite side of the road which was in the shade. There is only a one-way traffic along this road from the guide stone at the entrance near the roundabout to the other end of the road. Before crossing it the plaintiff looked to his left and right. The road was clear of vehicular traffic. He walked across the road and had come to within 3 feet of the other side when he was knocked down.

In his evidence the defendant said he was driving his car, a Mercedes, to collect some labourers. He was travelling along Wolferstan Road and having negotiated the roundabout at the entrance to Bunga Raya Road he entered it driving slowly. He saw a person walking very fast across the road. He tried to take avoiding action by turning to the right, but was unable to avoid the accident which occurred in the middle of the road. He stopped for a while but fearing an assault moved for about 20 feet when he stopped at the sight of a police constable.

The sergeant (P.W.3) arrived at the scene of the accident at 10.45 a.m. He found the defendant's car in front of a shop in the road with its nearside head lamp twisted to the left and dented. He took measurements and prepared a sketch plan from which it appears that the nearside front wheel of the car was at least 4 feet from the centre line and the rear wheel 7 feet. The car was therefore on the right-hand side of the road over the centre line at an angle to it where it came to a stop. I appreciate that in a road with a one-way traffic a car could be on either side. The position of the car is relevant in considering the distance the plaintiff had crossed the road at the time of impact. If the defendant said that he had stopped and then proceeded 20 feet after the impact then he must have hit the plaintiff when the latter was well over the centre of the road but not as he (the plaintiff) said 3 feet from the right side of the road. He was struck obviously by the nearside head lamp of the car judging from the only damage to it. Even assuming that the car was at the extreme edge of the road at the time of the collision, allowing for the width of the car which is 5ft. 8ins., the plaintiff could not have been less than 6 feet from the edge of the road. It seems to me that the collision took place when the plaintiff had crossed at least two-thirds of the road which at this point is 38ft. 3ins. wide. The defendant after negotiating the roundabout must have swung into the right side of Bunga Raya Road at a speed in excess of what is proper in such a crowded part of the town. There is only a one-way traffic on this road. There were no cars parked at the point of impact and it is a fair inference that the defendant must have been tempted to drive fast as he entered the road. The car has certainly not suffered any extensive damage but it must be remembered this is not a collision between two vehicles. The car must have struck the plaintiff with some considerable force to have caused the head lamp to be twisted and dented.

The defendant gave different accounts as to when he first saw the plaintiff. According to his report, he saw the plaintiff come out of a shop, walk fast and cross the road. In his evidence he said the plaintiff was crossing his path and walking fast. In cross-examination he said he first saw the plaintiff 4 or 5 feet on the left and the plaintiff then darted across his path. There were no cars parked in this part of the road and there can be no suggestion of the plaintiff having suddenly emerged from behind any car on to the path of the defendant's car.

From all the evidence, including the sketch plan and measurements, I come to the conclusion and find as a fact that the defendant was either travelling very fast or was not keeping a proper look-out when he knocked down the plaintiff. I find the defendant solely to blame for the accident.

The next question for determination is the quantum of damages. At the time of the accident the plaintiff was about 20 years old. He was accepted as a student teacher at the Day Training Centre, Malacca, for teachers and had it not been for the accident would have commenced his course on 1st April, 1964. He would have been entitled to an allowance of $45 a month in 1964 and $150 in 1965 and 1966. On the completion of his three-year course he would start with a salary of $235 and a yearly increment of $15 until he reaches his maximum of $445 at the end of 16 years. He has a good school record both in athletics and studies and there is every prospect of his acquitting himself creditably in his profession.

The plaintiff has suffered a serious injury to his spinal cord involving a fracture of the 6th cervical vertebra. This has resulted in a paralysis of the muscles of the forearms and hands, the trunk and the lower limbs. There is a loss of sensation in the back of the hands and the whole of the body from below the second intercostal space. The hands are clawed and useless.

The lower limbs are flexed at the knee and hip joints and are in a state of intermittent spasms. As a result of his injury the plaintiff is reduced to such a state of helplessness that he is unable to perform the simplest function independently of aid and attention. His life expectation has been reduced by 20 years. His disabilities are permanent and he certainly faces a dreary prospect for the rest of his life.

The assessment of general damages is always a perplexing problem particularly so in this case as, apart from the case of *Quek Poh Ser & Anor.* v. *Jhagir Singh,*[1] there is hardly any comparable case which could serve as a guide. In that case a sum of $100,000 was awarded for a less serious injury which did not involve, as in the instant case, the paralysis of both hands and forearms. In arriving at an estimate there are factors which have to be taken into account which cannot be assessed in terms of money. The plaintiff has to be compensated somehow for the loss of earning capacity and the amenities of life during his remaining life expectancy. Taking all the relevant matters into consideration, I think that a sum of $110,000 would be an appropriate figure for general damages being a sum of $70,000 for loss of amenities and $40,000 for loss of earnings.

I assess the special damages as follows:—

Loss of clothing	$ 35.00
Loss of text book	5.00
Transport for parents to hospital	100.00
Loss of allowance as student teacher	1,305.00
For services of an attendant	2,400.00
	$3,845.00

There will be judgment for the plaintiff in the sum of $113,845 and costs.

Judgment for the plaintiff.

Solicitors: *Murphy & Dunbar; N. Ramachandran.*

RE LEE MOEY CHYE, DECD.

[O.C.J. (Azmi J.) October 31, 1965]

[J.B. — Originating Summons No. 62 of 1965]

Wills — Trusts — Whether void as infringing the rule against perpetuities or for uncertainty — Trust impracticable of performance.

In this case the testator after making some bequests directed in his will as follows:— "The remaining fifteen shares and the money in cash under my name shall be reserved as the ancestral property of my family. The money in cash must be remitted back to the fatherland (China) in order to form ancestral property. If and when my property is disposed of (sold), the value thereof must be remitted back to the fatherland (China) in order to form ancestral property".

The plaintiffs sought by originating summons a declaration that upon the true construction of the clause, the trust declared was (a) invalid as infringing the rule against perpetuities; (b) void for uncertainty; or (c) failed by reason that the trust declared therein is impracticable of performance.

Held: (1) as the trust was to be carried out in a foreign country namely China, the objection that the trust in this case was invalid according to the law in Singapore as infringing the rules against perpetuities was immaterial and it must therefore fail;

(2) the trust in this case was not void for uncertainty because the objects of the trust and the persons to be benefited by the trust were expressly designated;

(3) it was impracticable to send money to China because of exchange control restrictions and therefore the trust failed on the ground that it was impracticable of performance;

(4) the residuary estate should devolve as upon an intestacy and there should be an inquiry as to who should benefit under that intestacy.

Cases referred to:—

(1) *Choa Choon Neo* v. *Spottiswoode* (1896), 1 Ky. 216.

(2) *Yeap Cheah Neo* v. *Ong Cheng Neo* (1875), L.R. 6 P.C. 381.

(3) *Ng Eng Kiat* v. *Goh Lai Mui & others* [1940] M.L.J. 145.

(4) *Duncan* v. *Lawson* L.R. 41 Ch.D. 394 at p. 396.

(5) *Fordyce* v. *Bridges* (1847), 1 H.L. Cas. 1.

ORIGINATING SUMMONS.

K. C. Chan for the plaintiffs.

Y. R. Jumabhoy for the defendants.

Cur. Adv. Vult.

Azmi J.: This is an application by way of an originating summons for a declaration that upon the true construction of a clause in the will of Lee Moey Chye also spelt as Lee Bou Chai, the trust declared under the clause is:

(a) invalid as infringing the rules against perpetuities; or

(b) void for uncertainty; or

(c) fails by reason that the trust declared therein is impracticable of performance.

The clause in question reads as follows:

"The remaining fifteen shares and the money in cash under my name shall be reserved as the ancestral property of my family. The money in cash must be remitted back to the fatherland (China) in order to form ancestral property. If and when my property is disposed of (sold), the value thereof must be remitted back to the fatherland (China) in order to form ancestral property."

The facts are as follows. The deceased, Lee Moey Chye, left some property which consisted wholly of rubber land and he also left a will.

Under that will the testator divided his rubber land into 25 shares out of which he bequeathed 10 shares to certain named persons,